

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Ralf Schaefer, et al.
Serial No. : 09/293,702
For : A METHOD FOR DETERMINING ACCESS TIME OF
REPEATEDLY BROADCAST OBJECTS
Filed : April 16, 1999
Examiner : Mirza, Adnan M.
Art Unit : 2145
Confirmation No. : 5219

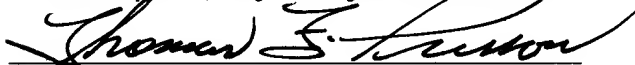
745 Fifth Avenue
New York, NY 10151
(212) 588-0800

FIRST CLASS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: **Mail Stop Appeal Brief-Patents Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450**, on January 31, 2007.

Thomas F. Presson, Reg. No. 41,442

Name of Applicant, Assignee or Registered Representative



Signature

January 31, 2007

Date of Signature

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the Final Rejection dated December 13, 2006 in the above-captioned application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. Please consider the reasons stated herein.

REASONS FOR REQUEST

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-17 are pending. Claims 1 and 14 are independent.

II. REJECTIONS UNDER 35 U.S.C. §103(a)

Claims 1-6 and 14-17 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,878,033 to Mouly (hereinafter, merely “Mouly”) in view of U.S. Patent No. 6,067,566 to Moline (hereinafter, merely “Moline”).

Claims 7-10 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Mouly in view of Moline and further in view of U.S. Patent No. 6,157,949 to Cheng, et al. (hereinafter, merely “Cheng”).

Claims 11 and 12 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Mouly in view of Moline and Cheng and further in view of U.S. Patent No. 5,864,854 to Boyle (hereinafter, merely “Boyle”).

Claim 13 was rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Mouly in view of Moline and further in view of U.S. Patent No. 6,345,313 to Lindholm (hereinafter, merely “Lindholm”).

Claim 1 recites, *inter alia*:

“A method for determining access times of **a plurality of segments of a plurality of broadcast objects** in a broadcast channel using a unidirectional communication scheme in order to transmit the plurality of broadcast objects from a server side to a receiver side, **each of the plurality of said segments of said plurality of broadcast objects are permitted to (i) have a different size, (ii) be segmented into smaller units in order to allow overlapped transmission or parallel transmission,** (iii) be

transmitted in a different repetitive pattern, and (iv) be transmitted in a broadcast cycle in different orders,” (Emphasis added)

Applicants submit that Mouly and Moline, taken either alone or in combination, do not teach or suggest the above identified features of claim 1. Specifically, there is no teaching or suggestion of a method for determining access times of a plurality of segments of a plurality of broadcast objects in a broadcast channel wherein each of the plurality of said segments of said plurality of broadcast objects are permitted to (i) have a different size and (ii) be segmented into smaller units in order to allow overlapped transmission or parallel transmission, as recited in independent claim 1.

The Office Action relies on Mouly to meet the above-identified features of claim 1. However, the relied upon portions of Mouly (column 4, lines 37-47 and column 8, lines 27-37) merely disclose that “[t]he category cues corresponding to the repetitions (1st bit of the field=1) are replaced by the sequence number of the corresponding first broadcasts (for the (p+1)th broadcast of the same message during the period, it would be possible to take the sequence number for any one of the p preceding broadcasts), this being advantageous in terms of volume of information since the sequence numbers are normally codeable on fewer bits than the category data (typically 6 bits instead of 15 if a capacity of the order of 40 messages per schedule period is provided for)” and that “each service message has a length of 88 bytes distributed into 4 blocks of 23 bytes (each including one level-2 byte).”

According to the cited portion of Mouly, each message is the same size, whereas claim 1 specifically recites that broadcast objects are permitted to have a different size.

Further, Cheng, Boyle and Lindholm, which are relied upon solely to meet the limitations found in the dependent claims, fail to cure the deficiencies of Mouly and Moline.

Furthermore, Applicants respectfully submit that there is no motivation, either in the references themselves, or from the knowledge of one of ordinary skill in the art, at the time the invention was made, to combine the disclosure of Mouly with the teachings of Moline. Additionally, the Office Action asserts on page 3 that “introducing method...as taught by Moline in the method of Mouly to reduce latency in terms of providing access to broadcast objects and providing real time collaboration among users via Internet.” However, this is a mere wish and hoped-for result, and is not a motivation found anywhere in the prior art of record. The correct obviousness standard is a motivation to combine by one of ordinary skill in the art, not whether or not the references teachings are “combinable.” See M.P.E.P. §2145 (“The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference... Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art.”)

Therefore, Applicants submit that independent claim 1 is patentable.

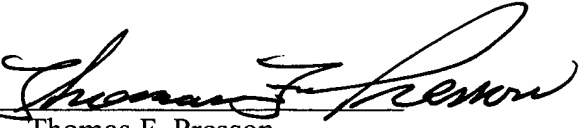
For reasons similar to, or somewhat similar to, those described above with regard to independent claim 1, independent claim 14 is also believed to be patentable.

The other claims in this application are each dependent on an independent claim discussed above, and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Please charge any additional fees that may be needed, and credit any
overpayment, to our Deposit Account No. 50-0320.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By 
Thomas F. Presson
Reg. No. 41,442
(212) 588-0800